SIOW CHOON SEE v. PUBLIC PROSECUTOR

[A.Cr.J. (Adams J.) May 4, 1961]

[Muar — Criminal Appeal No. 20 of 1961]

Criminal Law and Procedure — Plea of guilty — Retraction — Jurisdiction of Court.

The accused was charged with failing to comply with an order made under section 15 of the Prevention of Crimes Ordinance, 1959. On being brought before a Magistrate the accused pleaded guilty, but the Magistrate decided that he had no jurisdiction to try the case and directed that the case be transferred to the Sessions Court. In the Sessions Court the learned President refused to allow the accused to plead not guilty on the authority of the *dicta* of Rigby J. in *Public Prosecutor* v. *San Kim Kai,* (1) because the accused had already pleaded guilty before the Magistrate. On appeal,

Held: (1) the Magistrate had no jurisdiction and he could not have recorded any plea. The learned President being competent to try the case should have entered the plaintiff's plea however frivolous it might appear to be to him before he heard the evidence.

Per Adams J.: "The *dicta* of Rigby J. in *San Kim Kai's Case* refers to a retraction of a plea of guilty. Before a plea can be retracted there must have been a plea taken by a Court competent to try the case."

Case referred to:—

(1) *Public Prosecutor* v. *San Kim Kai* [1960] M.L.J. 265.

MAGISTRATE'S CRIMINAL APPEAL.

Adams J. (delivering oral judgment): The accused stood charged with the offence of failing to comply with the requirements of an order made under section 15 of the Prevention of Crimes Ordinance No. 13 of 1959. On his arrest he was produced before the learned Magistrate at Muar and the case was brought in the Magistrate's Court. He was charged before the Magistrate on the 15th of March, 1961 and pleaded guilty. He was produced again before the learned Magistrate on the 27th of March when the learned Magistrate quite rightly decided that he had no jurisdiction to try the case and directed that it shall be transferred to the Sessions Court.

The accused was produced in the Sessions Court on the 28th of March, 1961. When he was charged before the learned President he attempted to plead not guilty. The learned President, however, refused to allow him to do this as he held that the accused had already pleaded guilty before the learned Magistrate and following the *dicta* of Rigby J. in *Public Prosecutor* v. *San Kim Kai,* (1) the learned President saw no good reason why the accused should, as he put it, "retract his plea" because the accused admitted that he had been out of the house at the time stated in the charge.

The *dicta* of Rigby J. in *San Kim Kai's case* refers to a retraction of a plea of guilty. Before a plea can be retracted there must have been a plea taken by a Court competent to try the case. The proceedings before the Magistrate were a nullity. The Magistrate had no jurisdiction and he could not have recorded any plea. The first time the accused was charged before the learned President who was competent to try the case he pleaded not guilty and the learned President should have entered that plea however frivolous it might appear to be to him before he heard the evidence.

The appeal is therefore allowed and the case must go back to the President with the direction that the accused's plea of not guilty be entered and the case be tried.

I really do feel that it is time that the Police learned the relevant provisions of the Courts Ordinance which has, after all been on the Statute Book for over ten years and took a little care to ensure that a criminal case is brought in a Court that has jurisdiction to try it.

Appeal allowed.

LOH CHIK SAN v. LOH CHAK WAN

[A.C.J. (Ismail Khan J.) May 8, 1961]

[Seremban — Civil Appeal No. 4 of 1960]

Landlord and tenant — Notice to quit — Tenant not in personal occupation — Notice returned to landlord indorsed "gone away" — Whether valid determination of tenancy.

The sole question in this case was whether a notice to quit by a landlord to the tenant (who had sublet nearly the whole of the premises except a small room, and who was not in personal occupation of the said premises or room) by registered post and returned by the Post Office with the indorsement "gone away" was sufficient to determine the tenancy.

Held: the appellant did not personally occupy the said premises and the presumption of service was rebutted by the indorsement by the postal peon's certificate "gone away". As such there was no valid determination of the tenancy.

Per Ismail Khan J.: "Had the notice to quit been served according to law one calendar month from the date of the determination of the tenancy, it would have been sufficient in law. The prerequisite condition for determination of a periodical monthly tenancy, whether it is in respect of premises under the Control of Rent Ordinance or outside of it, is a valid and sufficient notice to quit. That must be determined by the Common Law for there is no statutory provision regulating the length of notice and mode of service."

Cases referred to:—

(1) *Gresham Howes Estate Co.* v. *Rossa Grand Gold Mining Co.* [1870] W.N. 119.

(2) *Hogg* v. *Brooks* (1885), 15 Q.B.D. 256.

CIVIL APPEAL.

Edgar Joseph Jr., for the appellant.
Lall Singh Muker for the respondent.

Ismail Khan J.: The appellant who is the principal tenant of controlled premises No. 7, Singapore Street, Seremban, appeals against the judgment and order of the President, Sessions Court, Seremban, granting possession of the premises to the respondent, the owner and landlord of the premises.

The respondent let the premises to the appellant as far back as 1937 on a periodical

monthly tenancy. The appellant who was until 1955 the sole proprietor of a provision shop Chop Weng Chan carried on business in some part of the premises and utilised the rest of the premises for himself and members of his family for residential purposes until 1955. Soon thereafter he discontinued his business. He left for Kuala Lumpur and has been residing there ever since with his family. The appellant sublet the substantial part of the premises to under-tenants, there being apparently no restriction in the tenancy agreement to sublet nor was his tenancy determined earlier, reserving to himself a tiny room at the back of the premises. His son who is a police clerk at Tampin, P.W.1, was in the habit of visiting this room during the weekend. The room contained only a table and some old furniture of no appreciable value, and during his visits his son used to read his newspapers there for an hour or two.

The appellant continued to send the rents by post addressed from No. 7, Singapore Street, Seremban, as if he were living there. The respondent's receipts posted to the tenant were invariably returned, for the letters could not be delivered. There was no evidence that the respondent knew where he was actually living. The appellant's letter dated 13th May, 1959. forwarding his monthly rent showed his purported address to be c/o P. O. Box 78, Seremban. That, however, did not give the respondent any knowledge of the actual place of the appellant's residence, but then the respondent knew he was no longer in personal occupation.

On 5th June, 1959, the respondent forwarded by registered post to the appellant at No. 7, Singapore Street, Seremban, a notice to quit on or before 31st July, 1959. The letter was returned by the post office with the indorsement "gone away".

In the result the respondent brought this action for eviction alleging that the appellant was not in possession, but stating the facts regarding his abortive attempt to serve the notice on the appellant and contended that the notice to quit was deemed to have been served, though undelivered, on the day when the postman called at the premises with the letter.

The defence was threefold :—

(1) That the tenancy had not been determined according to law within the meaning of section 12(4) of the Control of Rent Ordinance, 1956, since it was never served.

(2) The period of notice was insufficient.

(3) The appellant, though not in actual physical occupation, continued to be in juridical possession of the premises by a member of the family, his son.

In this appeal the appellant abandoned the third ground and confined his contention to the first two grounds.

In the view I take of the first issue, it is not necessary to consider the second contention urged by the appellant. Had the notice to quit been served according to law one calendar month from the date of the determination of the tenancy, it would have been sufficient in law. The prerequisite condition for determination of a periodical monthly tenancy, whether it is in respect of premises under the Control of Rent Ordinance or outside of it, is a valid and sufficient notice to quit. That must be determined by the Common Law for there is no statutory provision regulating the length of notice and mode of service.

That a letter has been posted and unreturned is *prima facie* but not conclusive evidence of service — see *Gresham Howes Estate Co.* v. *Rossa Grand Gold Mining Co.*[1] In this case, however, the appellant did not personally occupy the premises and the presumption of service was rebutted by the indorsement by the postal peon's certificate "gone away".

I am of the opinion that there is no valid determination of the tenancy. In *Hogg* v. *Brooks*,[2] it was held that where the tenant could not be found, neither the written notice sent by post to his last known address returned undelivered nor the notice served upon the under-tenant is sufficient.

The appeal must be allowed with costs here and below.

Appeal allowed.

Solicitors: *Joseph & Son; Lovelace & Hastings.*

KWONG CHUN HEONG v. ANGLO-SWISS WATCH CO.

[A.C.J. (Chua J.) May 12, 1961]

[Singapore — District Court Appeal No. 25 of 1960]

Landlord and tenant — Space in the wall — Whether tenancy of floor includes external wall.

The respondent in this appeal sought possession of that portion of the external wall of the ground floor of No. 64 High Street in which is a built-in show-case which the appellant uses for the display and sale of costume jewellery. Counsel for the appellant contended: (a) that the show-case was part and parcel of the first floor for over 30 years and that when the first floor was sublet the space occupied by the show case on the ground floor was also included; (b) that even if there is no tenancy there is a licence coupled with a tenancy and that it can only be revoked by the landlord who gave the licence; and (c) that since the respondent and the landlord knew that the show-case was used by some other person when the tenancy was granted to the respondent, the tenancy granted to the respondent did not include the space occupied by the show-case.

Held: there was no evidence that the landlord granted to the tenant of the first floor a tenancy or a licence to use the space in the wall on the ground floor. The appellant had only a bare licence and the respondent is entitled to bring this action.

DISTRICT COURT APPEAL.

J. F. McWilliams for the appellant.

F. B. de Souza for the respondent.